IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 978 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALBHAI MAGABHAI GADHAVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 978 of 2004

NANAVATY ADVOCATES for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 06-11-2003. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about two criminal cases pending against the petitioner. Both these cases are registered under the Bombay Prohibition Act. The detaining authority has also relied upon the statement of secret witnesses. After being satisfied subjectively, the detaining authority has passed the order of detention against the petitioner, which is impugned in this petition.

2) Mr.Hriday Buch, learned advocate for the petitioner submitted that in connection with the aforesaid criminal cases, six persons were detained. Out of them, one detenu had preferred Special Civil Application No.16729/2003 before this Court, which was allowed by this Court and the said detenu was released. While allowing aforesaid Special Civil Application, this Court has observed in paras 7 and 8 as under :

> "7. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.
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> 8. So, on the one hand, with respect to the registered offences, it could not be said that the illegal activities of the petitioner would lead to a threat to public order, and on the other hand, the statements of witnesses were not considered and their names were not disclosed to

the petitioner which would amount to a violation of the principle of natural justice. Therefore, on these counts, the order of detention is required to be quashed and set aside."

3) Mr.Buch, learned advocate for the petitioner has further submitted that the facts of the present case are identical to the aforesaid case and, therefore, on the basis of parity, this petition is required to be allowed. At this stage, learned advocate for the petitioner, after taking instructions, voluntarily made a statement that the petitioner will not enter area of Surat city upto 31st October, 2004, unless he is required to attend Court proceedings. In view of the statement made by learned advocate for the petitioner, the police authority is directed to monitor whether the petitioner is entering Surat city or not.

4) When the co-detenu is released by this Court, whose case is similar to the present petitioner, on the basis of parity, this petition is required to be allowed on the same ground and it is allowed accordingly.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 06-11-2003 is quashed and set aside. The detenu, Gopalbhai Magabhai Gadhavi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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